

CARTER LEDYARD & MILBURN LLP
 Keith D. Nowak, Esq. (KN-0230)
 2 Wall Street
 New York, NY 10005
 Phone: (212) 238-8610
 Fax: (212) 732-3232
 Attorneys for Defendants
 CD WORKS and L&M OPTICAL DISC, LLC

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X	:	
SERIOUS USA, INC; SERIOUS IP, INC.;	:	ECF CASE
And DXPDD, LLC,	:	ANSWER, AFFIRMATIVE
	:	DEFENSES AND
Plaintiff,	:	COUNTERCLAIM
	:	(JURY TRIAL DEMANDED)
- against -	:	
	:	
CD DIGITAL CARD; CD WORKS; DISC	:	
MAKERS; IMX SOLUTIONS. INC.;	:	
INGRAM MICRO INC.; L&M OPTICAL	:	CIVIL ACTION NO. 08-CV-4808
DISC, LLC; MICROVISION	:	(SHS)
DEVELOPMENT, INC.; ONEDISC.COM,	:	
INC. and SONARUS CORPORATION,	:	
	:	
Defendants.	:	
----- X	:	

Defendants CD WORKS and L&M OPTICAL DISC, LLC (collectively "Defendants") hereby file this Answer and Counterclaim in response to the Complaint filed by Plaintiffs, SERIOUS USA, INC; SERIOUS IP, INC.; and DXPDD, LLC (collectively "Plaintiffs").

In response to the numbered paragraphs of Plaintiffs' Complaint which apply to Defendants CD WORKS and L&M OPTICAL DISC, LLC, Defendants CD WORKS and L&M OPTICAL DISC, LLC. state as follows:

THE PARTIES

1. Defendants are without sufficient knowledge or information to form a belief as to whether the averments of Paragraph 1 of the Complaint are true and correct and therefore deny same.
2. Defendants are without sufficient knowledge or information to form a belief as to whether the averments of Paragraph 1 of the Complaint are true and correct and therefore deny same.
3. Defendants are without sufficient knowledge or information to form a belief as to whether the averments of Paragraph 1 of the Complaint are true and correct and therefore deny same.
4. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
5. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
6. Denied. CD Works is a DBA of Zerious Electronic Publishing Corporation located at 93 Park Street, Beverly, Massachusetts 01915.
7. Admitted that Defendant CD WORKS does business in the State of New York and this District but denies that CD WORKS has committed acts of patent infringement within the State of New York or this District.
8. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
9. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

10. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

11. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

12. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

13. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

14. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

15. Admitted.

16. Admitted that Defendant L&M OPTICAL DISC, LLC.

does business in the State of New York and this District but denies that L&M OPTICAL DISC, LLC. has committed acts of patent infringement within the State of New York or this District.

17. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

18. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

19. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

20. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

21. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

22. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

JURISDICTION AND VENUE

23. Admitted.

24. Admitted.

PATENTS IN SUIT

25. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 25 of the Complaint are true and correct and therefore deny same.

26. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 26 of the Complaint are true and correct and therefore deny same.

27. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 27 of the Complaint are true and correct and therefore deny same.

28. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 28 of the Complaint are true and correct and therefore deny same.

29. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 29 of the Complaint are true and correct and therefore deny same.

30. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 30 of the Complaint are true and correct and therefore deny same.

31. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 31 of the Complaint are true and correct and therefore deny same.

32. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 31 of the Complaint are true and correct and therefore deny same.

33. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 31 of the Complaint are true and correct and therefore deny same.

COUNT I

Infringement of United States Design Patent No. D503,404 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvison, OneDisc and Sonarus.

34. Denied as to Defendants CD WORKS and L&M OPTICAL DISC, LLC.

35. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

36. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

37. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

38. Denied.

39. Denied.

40. Denied.

41. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

42. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

43. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

44. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

45. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

46. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

47. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

48. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

49. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

50. Denied.

51. Denied.

52. Denied.

53. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

54. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

55. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

56. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

57. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

58. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

59. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

60. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

61. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT II

Infringement of United States Design Patent No. 6,510,124 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvison, OneDisc and Sonarus.

62. Denied as to Defendants CD WORKS and L&M OPTICAL DISC, LLC.

63. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

- 64. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 65. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 66. Denied.
- 67. Denied.
- 68. Denied.
- 69. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 70. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 71. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 72. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 73. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 74. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 75. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 76. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

- 77. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 78. Denied.
- 79. Denied.
- 80. Denied.
- 81. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 82. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 83. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 84. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 85. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 86. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 87. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 88. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 89. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT III

Infringement of United States Design Patent No. 6,762,988 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvison, OneDisc and Sonarus.

90. Denied as to Defendants CD WORKS and L&M OPTICAL DISC, LLC.
91. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
92. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
93. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
94. Denied.
95. Denied.
96. Denied.
97. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
98. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
99. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
100. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
101. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

- 102. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 103. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 104. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 105. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 106. Denied.
- 107. Denied.
- 108. Denied.
- 109. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 110. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 111. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 112. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 113. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 114. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

115. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

116. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

117. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT IV

Infringement of United States Design Patent No.7,308,696 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvison, OneDisc and Sonarus.

118. Denied as to Defendants CD WORKS and L&M OPTICAL DISC, LLC.

119. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

120. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

121. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

122. Denied.

123. Denied.

124. Denied.

125. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

126. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

- 127. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 128. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 129. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 130. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 131. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 132. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 133. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 134. Denied.
- 135. Denied.
- 136. Denied.
- 137. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 138. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.
- 139. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

140. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

141. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

142. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

143. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

144. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

145. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT V

Infringement of United States Design Patent No. D502,469 by Each of CD Digital, and OneDisc.

146. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

147. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

148. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

149. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

150. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

151. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

152. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT VI

Infringement of United States Design Patent No. 6,304,544 by Each of CD Digital, CDW, ImX, OneDisc and Sonarus.

153. Denied as to Defendant CD WORKS.

154. No response required from Defendant CD WORKS.

155. No response required from Defendant CD WORKS.

156. No response required from Defendant CD WORKS.

157. Denied.

158. Denied.

159. Denied.

160. No response required from Defendant CD WORKS.

161. No response required from Defendant CD WORKS.

162. No response required from Defendant CD WORKS.

163. No response required from Defendant CD WORKS.

164. No response required from Defendant CD WORKS.

165. No response required from Defendant CD WORKS.

166. No response required from Defendant CD WORKS.

167. No response required from Defendant CD WORKS.

168. No response required from Defendant CD WORKS.

COUNT VII

Infringement of United States Design Patent No. 5,982,736 by Each of CD Digital, and OneDisc.

169. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

170. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

171. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

172. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

173. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

174. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

175. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT VIII

Infringement of United States Design Patent No. 6,078,557 by Each of CD Digital, and OneDisc.

176. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

177. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

178. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

179. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

180. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

181. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

182. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

COUNT IX

Infringement of United States Design Patent No. 6,016,298 by CD Digital.

183. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

184. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

185. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

186. No response required from Defendants CD WORKS and L&M OPTICAL DISC, LLC.

AFFIRMATIVE DEFENSES

First Affirmative Defense.

- 1) Defendants have presented prior art to Plaintiffs' which shows that some or all of the claimed subject matter set forth in the patents-in-suit was known in the art at least one

year prior to the filing date of each of the respective patents. The patents-in-suit are therefore invalid and as such may not be enforced against Defendants.

Second Affirmative Defense.

- 2) Plaintiffs' have failed to state a claim of patent infringement upon which relief may be granted as the patents-in-suit are invalid.

Third Affirmative Defense.

- 3) Plaintiffs' claims against Defendants are barred by the doctrine of laches and/or estoppel.

Fourth Affirmative Defense.

- 4) Defendants are indemnified against any recovery by Plaintiffs' in this action pursuant to the provisions of UCC 2-312(3).

Fifth Affirmative Defense.

- 5) Plaintiffs' claim of infringement against Defendant CD WORKS is barred by license as products sold by Defendant CD WORKS were, upon information and belief, supplied to Defendant CD WORKS by one authorized to sell such products in the United States.

COUNTERCLAIM

Defendants CD WORKS and L&M OPTICAL DISC, LLC. complain of Plaintiffs' and allege as follows:

1. Defendant/Counterclaim Plaintiff CD WORKS is a DBA of Zerious Electronic Publishing Corporation with a principal place of business at 93 Park Street, Beverly, Massachusetts 01915.
2. Defendant/Counterclaim Plaintiff L&M OPTICAL DISC, LLC., is a New York Limited Liability Company with a principle place of business at 303 Louisiana Avenue, Brooklyn, New York 11207.

JURISDICTION AND VENUE

3. The following counterclaims arise under the Patent Statute, Title 35 U.S.C. § 1 *et. seq.* This Court has personal jurisdiction over Plaintiffs under 28 USC §§ 1331 and 1338 (a). Plaintiffs resides in and transact business in this State and the events giving rise to this Counterclaim occurred in this State and/or had effects in this State. Venue is proper in this District pursuant to Title 28 U.S.C. §§ 1391(b)(c) and 1400(b) because Plaintiffs regularly do business and are subject to personal jurisdiction here.

COUNT I
JUDGMENT OF INVALIDITY AND NON-INFRINGEMENT

4. Defendants incorporate by reference all the preceding paragraphs as if fully set forth herein.

5. Defendants allege, on information and belief, that U.S. Patent Nos. D503,404, 6,510,124, 6,762,988, 7,308,696, 5,982,736, 6,304,544, 6,078,557, D502,469 and 6,016,298 ("patents-in-suit") are invalid, unenforceable and void for one or more of the following reasons:

- (a) Defendants have not infringed any claim of the patents-in-suit;
- (b) The patentee of each patent did not invent the subject matter patented, nor did he make any invention or discovery, either novel, original or otherwise, within the meaning of United States Code, Title 35;
- (c) The alleged invention in each patent was made by another person in this country before the patentee's alleged invention, and such other person had not abandoned, suppressed, or concealed it;
- (d) The claims, and each of them, of each patent are excessively vague and indefinite and do not distinctly point out and define the invention;

(e) In light of the prior art at the time each alleged invention was made, the subject matter as claimed in each patent would have been obvious to a person skilled in the art to which the alleged invention relates and does not constitute a patentable invention;

(f) More than one year prior to the filing of the original patent application which matured into each of the patents in suit, the alleged invention was patented or described in printed publications in this or in foreign countries, or was in public use or on sale in this country;

(g) Before the alleged invention or discovery by the patentee, the alleged invention in each patent was known or used by others and was on sale in this country and was patented or described in printed publication in this or in foreign countries;

(h) If there is any invention in the subject matter of any of the patents in suit, which is denied, the patents nevertheless were not obtained in a manner consistent with the provisions of Title 35 of the United States Code; and

(i) Plaintiffs, with full knowledge of the activities of Defendants CD WORKS and L&M OPTICAL DISC, LLC. have failed to assert its patents for a period since the issuance of the patents-in-suit while Defendants CD WORKS and L&M OPTICAL DISC, LLC. invested time and money in building their business and goodwill, and Plaintiffs are guilty of laches and cannot maintain any cause of action against Defendants CD WORKS and L&M OPTICAL DISC, LLC. under the patents-in-suit.

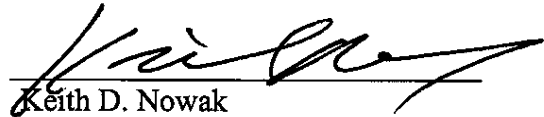
PRAYER FOR RELIEF

Wherefore, Defendants CD WORKS and L&M OPTICAL DISC, LLC. respectfully request that this Honorable Court enter a judgment that:

- A. The patents-in-suit are invalid and unenforceable;
- B. Defendants CD WORKS and L&M OPTICAL DISC, LLC. have not infringed any of the claims of the patents-in-suit, and
- C. Grants to Defendants such other relief as this Court seems necessary, just, fair and reasonable, including their costs and reasonable attorney's fees.

Respectfully Submitted,

Dated: 16 July 2008

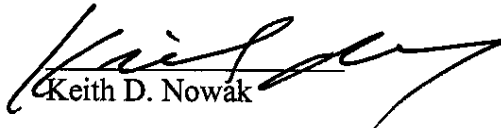

Keith D. Nowak
Bar Roll No. KN-0230
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005
(212) 238-8610 Phone
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM (JURY TRIAL DEMANDED) was served by e-mail and first class mail this 16th day of July, 2008 to:

Seth H. Ostrow
Dreier LLP
499 Park Avenue
New York, NY 10022
sostrow@dreierllp.com

Date: July 16, 2008


Keith D. Nowak